

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

BLEAKLEY PLATT & SCHMIDT, LLP
One North Lexington Avenue
White Plains, New York 10601
(914) 949-2700

Attorneys of Record for Defendants:
Joseph DeGiuseppe, Jr. (JD 6376)
Michael P. Benenati (MPB 9669)

-----X
JOHN W. BUCKLEY,

Plaintiff,

-against-

PHILIPS ELECTRONICS NORTH AMERICA
CORPORATION, PHILIPS SEMICONDUCTOR
MANUFACTURING, INC., NXP
SEMICONDUCTORS AND PHILIPS
ELECTRONICS NORTH AMERICA DEFINED
BENEFIT PENSION PLAN,

Defendants.

Case No. 07 Civ. 6775
(SCR) (GAY)

**AFFIDAVIT IN SUPPORT
OF DEFENDANT PHILIPS
ELECTRONICS NORTH
AMERICA DEFINED
BENEFIT PENSION PLAN'S
NOTICE OF MOTION TO
DISMISS PLAINTIFF'S
AMENDED COMPLAINT**

STATE OF NEW YORK)
)
) ss:
COUNTY OF WESTCHESTER)

JOSEPH DeGIUSEPPE, JR., an attorney duly admitted to practice law before the
Courts of the State of New York and before this Court, being duly sworn, deposes and says:

1. I am a partner with the law firm of Bleakley Platt & Schmidt, LLP, counsel of record for defendants, and as such, I am fully familiar with the facts and circumstances contained herein.
2. This Affidavit is submitted in support of the motion of Defendant Philips Electronics North America Defined Benefit Pension Plan's (the "Defendant Plan") to dismiss the

Amended Complaint filed on or about April 23, 2008 ("Amended Complaint") in the above-captioned action by Plaintiff John W. Buckley (the "Plaintiff"), pursuant to Rule 12(b)(6) of the Federal Rules of Civil Procedure, for failure to state a claim upon which relief can be granted against the Defendant Plan.

3. Annexed hereto as Exhibit A is a true and correct copy of Plaintiff's Amended Complaint.

4. Annexed hereto as Exhibit B is a true and correct copy of Plaintiff's original Complaint.

5. Annexed hereto as Exhibit C is a true and correct copy of Plaintiff's March 10, 2008 letter requesting a pre-motion conference for the purpose of seeking the Court's permission to file an Amended Complaint to assert a Section 510 claim under the Employee Retirement Income Security Act.

6. Annexed hereto as Exhibit D is a true and correct copy of Plaintiff's Resume, as produced with Plaintiff's discovery responses in this action.

7. Annexed hereto as Exhibit E is a true and correct copy of the Charge that Plaintiff filed with the U.S. Equal Employment Opportunity Commission on or about February 22, 2005.

8. Annexed hereto as Exhibit F is a copy of *Foley v. Bethlehem Steel Corp.*, No. 87-CV-1489A, 1998 U.S. Dist. LEXIS 12176, 1998 WL 34313090 (W.D.N.Y. Jan. 27, 1998).

9. Annexed hereto as Exhibit G is a copy of *Tirone v New York Stock Exchange, Inc.*, 2006 U.S. Dist. LEXIS 69591 (S.D.N.Y. 2006).

10. Annexed hereto as Exhibit H is a copy of *Downes v. J.P. Morgan Chase & Co.*, 2004 U.S. Dist. LEXIS 10510, No. 03 Civ. 8991 (GEL), 2004 WL 1277991 (S.D.N.Y. June 8, 2004).

11. Annexed hereto as Exhibit I is a copy of *DeSimone v. Transprint USA, Inc.*, 1996 U.S. Dist. LEXIS 5700, No. 94 Civ. 3130 (JFK), 1996 WL 209951 (S.D.N.Y. Apr. 29, 1996).

12. Annexed hereto as Exhibit J is a copy of *Maguire v. Level Sights, Inc.*, 2004 U.S. Dist. LEXIS 13566 at 5, No. 03 Civ. 2294 (GBD), 2004 WL 1621187 (S.D.N.Y. July 19, 2004).

13. Annexed hereto as Exhibit K is a copy of *Vaughn v. Waste Indus. USA, Inc.*, 2007 U.S. Dist. LEXIS 29133 (S.D.S.C. 2007)

14. The Court is respectfully referred to the accompanying memorandum of law which contains a recitation of the procedural history of the instant action and the relevant facts.

15. I have reviewed the foregoing paragraphs and they are true to the best of my knowledge.



Joseph DeGiuseppe, Jr.

Sworn to before me this
26th day of August, 2008



MARYBETH BELLES
Notary Public, State of New York
No. 01BE4947056
Qualified in Westchester County
Commission Expires 8-6-11